of action against the defendant. *Duquesne Distributing Co.* v. *Greenbaum*, 121 S. W. 1026 (Ky.).

The rule that a master is liable for all torts committed by his servants in the scope of their authority, and in the course of the master's business, is applied to deceit and libel. See *Barwick* v. *English Joint Stock Bank*, L. R. 2 Exch. 259; *Citizens Life Assurance Co.* v. *Brown*, [1904] A. C. 423. But in cases of slander it has sometimes been denied. *Behre* v. *National Cash Register Co.*, 100 Ga. 213; *Singer Mfg. Co.* v. *Taylor*, 150 Ala. 574. In the principal case, the court treats the injurious falsehood as slander, and goes on the theory that, as the speaking of defamatory words is peculiarly subject to temporary emotions, as to which a master cannot control his servants, he should not be liable unless he authorizes or ratifies the slander itself. But this same theory would frequently be applicable to the falsehoods of deceit and libel. Moreover, an employee who, prompted entirely by personal motives or passions, utters slander, thereby departs from the scope of his authority. See *Sawyer* v. *R. R.*, 142 N. C. 1. Accordingly, few slanders by an agent will come within even the usual limits of the rule of *respondeat superior;* and the better view applies to oral defamation the same test for vicarious liability as to other torts. *Rivers* v. *Yazoo & Miss. R. R. Co.*, 90 Miss. 196; *Hypes* v. *Southern Ry. Co.*, 82 S. C. 315.

BANKRUPTCY — DISCHARGE — OBTAINING PROPERTY BY FALSE STATEMENT IN WRITING. — More than four months before the institution of bankruptcy proceedings, a bankrupt made a false statement in writing by which he obtained property on credit within four months of the institution of such proceedings. *Held*, that he is not entitled to a discharge. *In re Terens*, 172 Fed. 938 (Dist. Ct., E. D. Wis.).

Section 14 b of the Bankruptcy Act of 1898, as amended in 1903, provides that a bankrupt's application for a discharge will be denied if he has obtained property on credit from any person upon a materially false statement in writing. Although no specific time was fixed by the statute, within which such statement must be made, yet by analogy with other provisions of the act, it has been suggested that the statement must be made within the four months' period. See BRANDENBURG, BANKRUPTCY, 3 ed., § 370. The principal case seems correct in reaching a different conclusion, for the language of the statute is not ambiguous, and an unintentional omission should not be presumed, since the next sub-section, making concealment of assets, etc., a cause for refusing a discharge, expressly mentions the time within which such an act must be done to prevent a discharge.

BANKRUPTCY — PREFERENCES — LIEN ON EXEMPT PROPERTY. — Within four months of the making of a chattel mortgage, the mortgagor was adjudicated bankrupt. The mortgagee, though surrendering the mortgage as a preference, asserted a lien on certain property included in the mortgage. This was claimed by the bankrupt as exempt. The mortgagee then proved his whole claim against the bankrupt's estate; whereupon the bankrupt asked that the exemption in question be set apart. *Held*, that he may have this property free from any claim by the mortgagee. *In re Soper*, 173 Fed. 116 (Dist. Ct., D. Neb.).

Since exempt property is not subject to creditors' demands, its transfer is not a preference. See *Mills* v. *J. H. Fisher & Co.*, 159 Fed. 897. *Cf. Bloedorn* v. *Jewell*, 34 Neb. 649. And the title to exempt property does not pass to the trustee, but remains in the bankrupt. BANKRUPTCY ACT OF 1898, § 70 *a; Lockwood* v. *Exchange Bank*, 190 U. S. 294. In Nebraska, a mortgagor of chattels retains title, and the mortgagee has only a lien. *Drummond Carriage Co.* v. *Mills*, 54 Neb. 417. And a lienee may surrender part of his security and retain the rest. *Palmer* v. *Tucker*, 45 Me. 316. So it appears that the lien asserted against the exempt property belonging to the bankrupt was not a preference, and persisted after the surrender of the mortgage. But secured creditors' claims are allowed only for the sum owing above the value of the securities. BANKRUPTCY ACT OF

1898, § 57 *e*. And since the mortgagee proved his whole claim, he would seem to have waived his lien. *Ex parte Downes*, 1 Rose 96. Under similar provisions of previous bankruptcy acts, however, a secured creditor who proved his claim in ignorance of the effect was allowed to withdraw the proof and rely on the security. *Ex parte Harwood*, Fed. Cas. No. 6, 185; *In re Baxter*, 12 Fed. 72. Such a privilege should be given to the mortgagee in the present case, as from his assertion of the lien it is clear that he meant to keep it. Yet the principal case is right in holding that if the dividends on the claim are retained, the security is lost. *In re Lantzenheimer*, 124 Fed. 716.

BANKRUPTCY — PROVABLE CLAIMS — RIGHT TO PROCEEDS OF CONVERTED STOCK. — A broker converted stock belonging to his customer. At the time of his bankruptcy, other stock of the same kind was found in his possession. *Held*, that the customer is entitled to the stock as against the bankrupt's general creditors. *In re Brown & Co.*, 171 Fed. 254 (Dist. Ct., S. D. N. Y.).

A broker need not keep a customer's stock separate from that belonging to other customers or to himself. *Richardson* v. *Shaw*, 209 U. S. 365. *Contra*, *Van Voorhis* v. *Rea Bro. Co.*, 153 Pa. St. 19. But a broker must keep a sufficient number of shares of each kind of stock to meet all his outstanding obligations in that stock; otherwise he is guilty of a conversion. Nor will a re-purchase of the same kind of stock after the conversion relieve him from liability. *Taussig* v. *Hart*, 58 N. Y. 425. In the principal case, the re-purchase of the stock, even with the intention of appropriating it to the original customer, could not give the latter a right to it, especially since bankruptcy intervened. The result in the principal case should have been reached only if the funds which were produced by the broker's conversion and which he held as constructive trustee for his customer were capable of being followed into the new shares; upon this latter theory, the customer would have been protected by his equitable right to the new *res*. *Langton* v. *Waite*, L. R. 6 Eq. 165, 173; *In re Halletts Estate*, L. R. 13 Ch. 696, 711.

BANKRUPTCY — RIGHTS AND DUTIES OF BANKRUPT — PUNISHMENT FOR CONTEMPT. — A bankrupt appeared, by a preponderance of evidence, to be wilfully disobeying an order of the referee requiring him to surrender certain assets alleged to be in his possession. The court, however, was not satisfied beyond a reasonable doubt of the truth of these facts. *Held*, that it will not adjudge the bankrupt in contempt. *In re J. H. & A. P. Mize*, 22 Am. B. R. 577 (Dist. Ct., N. D. Ala., July, 1909).

For a discussion of the principles involved, see 23 HARV. L. REV. 30.

BANKRUPTCY — WHO MAY BE A PETITIONING CREDITOR — SPLITTING CLAIMS. — A made a general assignment for the benefit of his creditors. B, who held three notes made by A, thereupon endorsed two of them to C and D respectively, in order to qualify them as petitioning creditors. B, C, and D joined in a petition to have A adjudicated a bankrupt. *Held*, that C and D are not competent petitioners. *Re Lewis F. Perry & Whitney Co.*, 172 Fed. 745 (Dist. Ct., D. Mass.). See NOTES, p. 296.

BILLS AND NOTES — CHECKS — PAYMENT OF STOLEN CHECK SIGNED IN BLANK. — The defendant signed a check in blank and locked it up. It was stolen, and the plaintiff bank, on which it was drawn, cashed it. *Held*, that the defendant is liable for the amount of the check. *Trust Co. of America* v. *Conklin*, 42 N. Y. L. J. 793 (N. Y. Sup. Ct., Nov., 1909).

When a note is made to bearer, but not delivered by the maker, it is generally held that the latter is not liable even to a *bonâ fide* purchaser. *Burson* v. *Huntington*, 21 Mich. 415. *Contra*, *Shipley* v. *Carroll*, 45 Ill. 285. This result is based on the doctrine that delivery is an essential requisite of a valid note. It may be, however, that the maker's gross negligence will estop him from denying delivery.